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WITH THE
N.J. BOARD OF DENTISTRY
ON 10-6-92 cm

CERTIFIED TRUE COPY

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY
DOCKET NO.

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF THE LICENSE OF :
BURTON S. ROSEN, D.D.S. :
TO PRACTICE DENTISTRY IN THE :
STATE OF NEW JERSEY :

Administrative Action
FINAL DECISION & ORDER

This matter was opened to the New Jersey State Board of Dentistry ("Board") upon the filing of an Order to Show Cause and Complaint of ROBERT J. DEL TUFO, ATTORNEY GENERAL OF NEW JERSEY, by Anne Marie Kelly, Deputy Attorney General, against BURTON S. ROSEN, D.D.S. (hereinafter, sometimes "respondent"). The Complaint, filed on July 13, 1992, alleged in Counts I and II that respondent failed to comply with the Board's repeated demands for the patient records of A.M. and E.M. Said conduct was alleged in both Counts to constitute repeated acts of negligence, professional misconduct, and a failure to comply with the provisions of regulations administered by the Board in violation of N.J.S.A.45:1-21(d), (e), and (h) respectively. The complaint further alleged in Count III that respondent failed to disclose his name in a New Jersey Bell Advertisement in violation of N.J.A.C.13:30-8.6(h) and further failed to respond to the Board's repeated demands for payment of a penalty assessed pursuant to a Uniform Penalty Letter deemed professional misconduct in violation of N.J.S.A.45:1-21(e).

An answer to the allegations of the complaint was filed with the Board by way of a letter response filed on September 15, 1992, by the respondent. The answer set forth a plea of guilty to Counts I and II of the complaint and a plea of not guilty to Count III.

A hearing in this matter was held on September 16, 1992. Deputy Attorney General Anne Marie Kelly appeared on behalf of the complainant, and Dr. Rosen appeared pro se. The respondent was advised of his right to be represented by counsel during the course of these proceedings, but he stated that it was his intention to go forward without counsel and present his own defense.

D.A.G. Kelly advised the Board that the patient records which previously had not been provided by the respondent and which were the subject of the allegations in Counts I and II of the complaint had been received by the Board on September 15, 1992. She then introduced the following documents into evidence without objection from the respondent:

S-1 A page from New Jersey Bell Yellow Pages with an advertisement for "Dental Care Inc."

S-2 Uniform Penalty Letter dated August 5, 1991 alleging a violation of N.J.A.C.13:30-8.6(h) for failure to include the name of the licensee in an advertisement and assessing a civil penalty in the amount of \$1,000.

S-3 Letter from the Board to Dr. Rosen dated October 17, 1991 indicating no response to the Uniform Penalty Letter and providing an additional copy to the respondent.

S-4 Letter from the Board to Dr. Rosen dated November 14, 1991 advising that there had been no response to the Board's

letters of August 5 and October 17, 1991.

S-5 Letter from Dr. Rosen to the Board dated December 4, 1991 advising that he had verbally deleted this advertising with New Jersey Bell and was not aware that it had been printed.

S-6 Letter from the Board to Dr. Rosen dated March 30, 1992 with a final request to submit the civil penalty.

D.A.G. Kelly also provided the Board with a joint exhibit (J-1) which was a letter from New Jersey Bell to Dr. Rosen dated January 24, 1992 confirming that New Jersey Bell received his request to make changes in the next addition of the Burlington County Yellow Pages and that his account executive had been advised to include Dr. Rosen's name where the listing for "Dental Care Inc." appeared.

Dr. Rosen testified on his own behalf and advised the Board that New Jersey Bell Yellow Pages placed the advertisement for "Dental Care Inc." in error. He stated that he would have no reason to place such an advertisement without his name and that he had taken steps to assure that such an advertisement would not appear again.

The Board finds that the advertisement for "Dental Care Inc." as it appears in the New Jersey Bell Yellow Pages violates the Board's regulations concerning professional advertising at N.J.A.C. 13:30-8.6(h) in that the advertisement fails to contain the name of the licensee. The Board is not persuaded that the advertisement was placed in error. In fact, the letter (J-1) upon which Dr. Rosen relies to support the proposition that he had no control over the placement of this advertisement merely confirms the respondent's request to make the appropriate change in the next addition of the Yellow Pages.

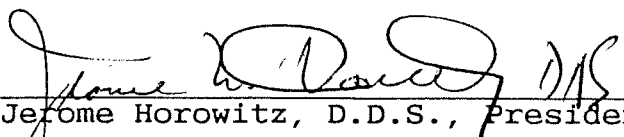
The Board further finds that the respondent's failure to comply with the Board's repeated demands for patient records as alleged in Counts I and II of the complaint constitute repeated acts of negligence, professional misconduct and a failure to comply with the provisions or regulations administered by the Board in violation of N.J.S.A.45:1-21(d), (e), and (h) respectively.

The Board having considered the entire record in this matter and the Board having considered the testimony of the respondent and the documents entered into evidence, and the Board finding that good cause exists for the entry of the within Order;

IT IS ON THIS 2nd DAY OF October, 1992,
HEREBY ORDERED THAT:

1. Respondent is hereby assessed a civil penalty in the amount of \$3,500.00 (\$1,000 for the violations set forth in Count I; \$1,500.00 for the violations set forth in Count II; and \$1,000.00 for the violations set forth in Count III). Said civil penalty shall be submitted to the Board by certified check or money order made payable to the State of New Jersey, at 124 Halsey Street, 6th Floor, Newark, New Jersey 07102 no later than the first day of the month following the entry date of this Order.

NEW JERSEY STATE BOARD OF DENTISTRY

By: 
Jerome Horowitz, D.D.S., President

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An answer to the allegations of the complaint was filed with the Board by way of a letter response filed on September 15, 1992, by the respondent. The answer set forth a plea of guilty to Counts I and II of the complaint and a plea of not guilty to Count III.

A hearing in this matter was held on September 16, 1992. Deputy Attorney General Anne Marie Kelly appeared on behalf of the complainant, and Dr. Rosen appeared pro se. The respondent was advised of his right to be represented by counsel during the course of these proceedings, but he stated that it was his intention to go forward without counsel and present his own defense.

D.A.G. Kelly advised the Board that the patient records which previously had not been provided by the respondent and which were the subject of the allegations in Counts I and II of the complaint had been received by the Board on September 15, 1992. She then introduced the following documents into evidence without objection from the respondent:

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Dr. Rosen testified on his own behalf and advised the Board that New Jersey Bell Yellow Pages placed the advertisement for "Dental Care Inc." in error. He stated that he would have no reason to place such an advertisement without his name and that he had taken steps to assure that such an advertisement would not appear again.

The Board finds that the advertisement for "Dental Care Inc." as it appears in the New Jersey Bell Yellow Pages violates the Board's regulations concerning professional advertising at N.J.A.C. 13:30-8.6(h) in that the advertisement fails to contain the name of the licensee. The Board is not persuaded that the advertisement was placed in error. In fact, the letter (J-1) upon which Dr. Rosen relies to support the proposition that he had no control over the placement of this advertisement merely confirms the respondent's request to make the appropriate change in the next addition of the Yellow Pages.

The Board further finds that the respondent's failure to comply with the Board's repeated demands for patient records as alleged in Counts I and II of the complaint constitute repeated acts of negligence, professional misconduct and a failure to comply with the provisions or regulations administered by the Board in violation of N.J.S.A.45:1-21(d), (e), and (h) respectively.


The Board having considered the entire record in this matter and the Board having considered the testimony of the respondent and the documents entered into evidence, and the Board finding that good cause exists for the entry of the within Order;

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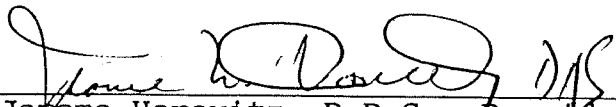
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